HUMAN RIGHTS

African Seminar on International Human Rights Standards and the Administration of Justice

Cairo (Egypt), 8-12 July 1991

UNITED NATIONS

World Campaign for Human Rights

HR/PUB/91/6

Centre for Human Rights
Geneva

African Seminar on International Human Rights Standards and the Administration of Justice

Cairo (Egypt), 8-12 July 1991

United Nations
New York, 1992

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Introduction

An African Seminar on International Human Rights Standards and the Administration of Justice was held in Cairo, Egypt, from 8 to 12 July 1991. The seminar was organized by the United Nations Centre for Human Rights in co-operation with the African Commission on Human and Peoples' Rights, and in collaboration with the Government of the Arab Republic of Egypt. It formed part of the programme of advisory services and technical assistance of the Centre for Human Rights.

Experts drawn from various international human rights bodies, the African Commission on Human and Peoples' Rights, from academia and the legal profession presented topical issues in the fields of human rights and administration of justice, followed by discussions with lively audience participation. Mr. Jan Martenson, Under-Secretary-General for Human Rights, and Mr. Liviu Bota, Chef de cabinet, United Nations Office at Geneva, chaired the meetings.

Well over 100 participants from 38 African States participated in the seminar. Representatives of some non-governmental organizations also took the floor during the discussions which followed the presentations by the panellists.

The seminar comprised an official opening session, seven working sessions and a closing session. The working sessions addressed respectively:

I. *Legislation*

Implementation of United Nations human rights standards and the administration of justice

II. *Administration of justice*

Procedural guarantees during investigation and prosecution; prevention of torture; treatment of detainees and prisoners; alternative treatment

III. *Administration of justice (continued)*

International co-operation in the field of crime prevention and criminal justice; the role of lawyers and the independence of the judiciary

IV. *Implementation*

Reporting obligations under major Human Rights Conventions; racism and racial discrimination; the Second Decade to Combat Racism and Racial Discrimination, work of the Committee on the

Elimination of Racial Discrimination; the International Covenants and the work of the Human Rights Committee; practical aspects of the application of the Convention on the Rights of the Child

V. *Regional and national institutions*

Regional institutions for the promotion and protection of human rights: the African Commission and the rule of law in the African Charter; national institutions for the promotion and protection of human rights

VI. *Other international organizations*

Humanitarian and refugee law; international labour standards

VII. *Economic, social and cultural rights; United Nations programme of advisory services and technical assistance in the field of human rights; the 1993 World Conference on Human Rights*

Opening session

The United Nations Under-Secretary-General for Human Rights, Mr. Jan Martenson, welcomed the participants and thanked the organizers and the Egyptian Government for their support and their commitment which had made the seminar possible. He acknowledged Egypt's strong support for the United Nations human rights programme and Mr. Boutros-Ghali's deep commitment to United Nations concerns in general and human rights issues in particular.

The Deputy Prime Minister for External Relations of Egypt, Mr. Boutros Boutros-Ghali, thanked the Centre for Human Rights and the African Commission on Human and Peoples' Rights for their untiring efforts in the service of the promotion and protection of human rights. He recalled Africa's struggle against oppression and colonialism and the approval, in 1981, of the African Charter on Human and Peoples' Rights. Egypt had been in the forefront of the struggle for human rights and the Universal Declaration of Human Rights. President Hosni Mubarak had encouraged all the Arab States on the African continent to embrace fully the principles laid down in the African Charter: respect for the dignity of human life was the very essence of human life itself.

Mr. Boutros-Ghali welcomed the seminar at a time of radical changes for Africa. African countries wished to be compatible with the new international environment. In this respect, he pointed to the Assembly of Heads of State and Government of the Organization of African Unity (OAU) held in Abuja, Nigeria, in May 1991, which had put special emphasis on the principles of freedom, equality and social justice.

Mr. Haggag also emphasized the importance of the seminar at a turning point in the history of Africa, underlining the role played by Egypt in the adoption and promotion of the African Charter on Human and Peoples' Rights.

Mr. Nguema recalled the history of the African Commission, whose work had been guided by the perception that human rights standards must be considered universal: "We consider ourselves as inhabitants of a global village". Stressing the primacy of law and individual freedoms, he acknowledged the difficulties encountered by the African Commission in the discharge of its functions and mandates.

In his opening statement, Mr. Martenson recalled that the history of the United Nations was inextricably linked to the history of international human rights. On the African continent, past examples of persistent and gross violations of human rights, exemplified by the system of *apartheid*, abounded. He welcomed recent positive developments in the respect of human rights; these improvements underlined that progress in the respect for human rights was connected with social and economic development. The United Nations had developed a complex and comprehensive system for the protection and promotion of human rights. This system was based on numerous international instruments in the field of human rights, such as the International Bill of Human Rights, adherence to which was virtually universal. The implementation of these instruments was entrusted to a large number of committees, working groups, special rapporteurs and commissions, whose tasks could be divided into four basic categories:

Reporting and complaints procedures;

Working groups and special rapporteurs established by mandate of the Commission on Human Rights;

The study of specific country situations;

Procedures to govern consideration of mass complaints, e.g. in the framework of ECOSOC resolution 1503 (XLVIII).

Mr. Martenson highlighted the achievements of the Centre's Programme of advisory services and technical assistance, which was now in a position to provide assistance adapted to the specific needs of countries which wished to avail themselves of such services. After humble beginnings, the programme had developed into a highly successful mechanism for the promotion and protection of human rights, both at the national and regional level. In the same context, Mr. Martenson pledged his continued support for the programme of technical co-operation between the Centre for Human Rights and the African Commission on Human and Peoples' Rights. The Centre had also developed various forms of co-operation with a number of African countries and institutions, notably the African Centre for Democracy and Human Rights Studies in Banjul and the Arab Institute of Human Rights in Tunis.

Mr. Martenson stressed the importance of respect for human rights in the administration of justice. The 1980s had been a busy "legislative" decade in this respect for the United Nations human rights programme: "Fairness and justice in any country's legal system will go a long way towards promoting the adherence of the citizen to that country's institutions and thus promote development within democratic institutions". Economic and social development depended to a large extent on a sense of legal security and an expectation of justice on the part of the population. Of numerous important United Nations instruments concerned with the administration of justice, Mr. Martenson singled out those adopted by the Eighth United Nations Con-

gress on the Prevention of Crime and the Treatment of Offenders (Havana, 1990), the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty (adopted in 1989) and the Basic Principles on the Independence of the Judiciary (adopted in 1985). The instrument with the most far-reaching implications for the respect of human rights and the administration of justice was perhaps the Convention on the Rights of the Child, which had entered into force in September 1990 and had already been ratified or acceded to by 33 States in Africa alone. This was heartening in a continent where roughly one half of the population came within the scope of application of the Convention.

Reaffirming the close links between democracy and development, Mr. Martenson welcomed the adoption of the African Charter for Popular Participation in Development and Transformation, which reflected a commitment to greater democratization of African countries in keeping with sustainable development policies. This was undoubtedly a promising step in the right direction, but there was scope, not least within the United Nations itself, for further measures aimed at universal protection of human rights standards. In this context, the forthcoming 1993 World Conference on Human Rights presented a unique opportunity to "take stock of achievements, review the present situation and explore new directions in the field of human rights for the 1990s and beyond".

Working session I

LEGISLATION

Mr. Jacq presented a survey of the United Nations legislative system in so far as it related to the administration of justice. He emphasized the autonomy of the legal scope of the United Nations instruments in the field and suggested that they could best be explained by reference to two major subjects: (*a*) the principles governing the very functioning of justice, and (*b*) the principles governing the right to punish.

The first subject primarily concerned access of the individual to the judicial organs of his or her country; article 14 of the International Covenant on Civil and Political Rights laid down basic rules in that regard. Mr. Jacq explained the significance of the right to be tried by an independent, competent and impartial tribunal and the right to be tried without undue delay. The Human Rights Committee, entrusted with monitoring the implementation of the Covenant, had not defined the notion of "unreasonable delays", whereas the European Commission of Human Rights and the European Court of Human Rights had done so. The European Court, in particular, was taking into consideration all the elements of the judicial procedure in any given case, such as diligent pursuit of the procedure by the parties, the complexity of the legal and factual situation, etc. Other notions, such as "equality of arms" in criminal proceedings, had eluded a precise definition in international human rights instruments and international law, and it was the task of the treaty-monitoring bodies to determine their scope.

In respect of the second issue, i.e. principles governing the very right to punish, Mr. Jacq emphasized that elements of criminal law had come to play an increasingly important role in the formulation of United Nations human rights instruments. The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana had given important impetus, as had recent General Assembly resolutions on computerization of criminal justice and on the fight against international terrorism.

The European Court of Human Rights had indicated that the decriminalization of certain offences could produce effects which in themselves were contrary to the objectives of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In this context, Mr. Jacq noted that more and more countries were contemplating alternatives to deprivation

of liberty as sanctions for criminal behaviour. General Assembly resolution 45/110 of 14 December 1990, on alternatives to imprisonment, was an important milestone: while it called upon Member States to provide for such alternatives in their legislation, it stressed that judicial guarantees for such alternative measures were necessary.

Mr. Jacq also referred to article 9 of the International Covenant on Civil and Political Rights (ICCPR)(protecting the right to security of person and freedom from arbitrary arrest or detention). That provision could be considered a compromise between article 9 of the Universal Declaration of Human Rights and article 5 of the European Convention. He recalled the jurisprudence of the European Court of Human Rights under the latter provision, which gave member States a larger margin of discretion in the implementation of the first three paragraphs (right to liberty and security of person, right to be informed promptly of any criminal charges, right to be brought promptly before a judge or other judicial officer authorized by law to exercise judicial power) than in respect of the two final paragraphs (right to have the lawfulness of detention reviewed speedily by a court, right to compensation for unlawful detention).

Discussion

Mr. Pheko inquired about the possibility of compensation for victims of unlawful detention and noted that the training of those called upon to investigate criminal charges left much to be desired in Africa. Mr. Jacq replied that the recruitment of magistrates and prosecutors was as important as their training. Wherever irregularities occurred in the investigation of criminal charges, just, equitable and timely compensation of victims of judicial errors should always be guaranteed.

Mr. El-Ibrachi pointed out that the Egyptian Criminal Code protected many of the rights enunciated by Mr. Jacq, in particular the rights of the defence; many cases concerning drug-related offences had been dismissed because of procedural irregularities at the investigating stage. The rights of minors were protected by numerous procedural safeguards. Similarly, under the Egyptian Civil Code, expropriation or nationalization could not be undertaken without award of due compensation.

Mr. Habiyambere referred to the need for increased efforts in the field of human rights education and information for African administrators of justice. Economic conditions sometimes did not allow for the provision of free legal assistance to indigent individuals in need of such assistance. Similarly, preventive detention was sometimes unduly prolonged in African countries, mostly because of lack of immediately available magistrates to examine a case. His concerns were echoed by Mrs. Coulibaly. Mr. Jacq conceded that adequate appropriations for national administrations of justice were important, but the proper management of administration of justice was not a recog-

nized human right. In the final analysis, it was incumbent upon Governments to give the administration of justice political priority.

Mr. Badawi El-Sheikh noted that African countries could benefit in multiple ways from United Nations human rights instruments and the experience of the treaty-monitoring bodies to improve local standards of administration of justice. He emphasized that it was of paramount importance for African States to ensure the compatibility of national legislation with international obligations. On the other hand, how could a system of alternative sanctions be implemented under difficult economic circumstances, or where local regulations were vague? Mr. Jacq, in reply, pointed to the possibility of preliminary rulings, by an international investigation and settlement authority, on the interpretation of national human rights legislation deemed to be inconsistent with international standards.

In respect of the issue of alternative sanctions to imprisonment, Counsellor Hussein observed that the Egyptian Penal Code contained many examples of alternative sanctions. He recommended that the death penalty should not be imposed for so-called political crimes, and that for political crimes or crimes of opinion a representative should always be appointed *ex officio* to safeguard the rights of the defence.

Mr. Posner criticized the practice of administrative detention in several African countries as being contrary to the principles of proper administration of justice, even in cases of national emergency. He inquired whether other African States had considered emulating the example of Zimbabwe which, in 1990, had repealed the Emergency Powers Act, and what steps were contemplated by the United Nations to eliminate such practices. Mr. Jacq recalled that several United Nations human rights bodies were in the process of examining the issue of administrative detention, in particular the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which was to consider at its 1991 session a report on the issue prepared by French expert Louis Joinet.

Mr. Belibi remarked that the concept of universality of human rights was occasionally called into question by the relative importance accorded to different rights in different countries. Mr. Bota replied that equality in the administration of justice, based on the perception that human rights were universal and not amenable to any hierarchical classification, was the cornerstone of United Nations endeavours to promote justice.

Working session II

ADMINISTRATION OF JUSTICE

Mr. Kama reviewed procedural guarantees during investigation and prosecution of a criminal offence, with particular emphasis on the practice of francophone African countries. At the international level, these guarantees were enshrined in article 14 of the ICCPR and in article 7 of the African Charter on Human and Peoples' Rights.[1] Mr. Kama emphasized that the criminal codes of many francophone African countries prescribed that the accused must be informed promptly and in detail of the charges against him/her, that he/she must benefit from adequate facilities and time for the preparation of his/her defence, and that he/she had the right to be represented by counsel of his/her own choice. Some constitutions, for example article 6, paragraph 4, of the Constitution of Senegal, stipulated that the rights of the defence were absolute rights at all stages of the procedure.

Procedural guarantees were applicable equally to all forms of preventive detention, even though Mr. Kama conceded that most African countries did not have precise time-limits for the duration of such detention. Notwithstanding, many countries did adhere to the fundamental rule of article 9, paragraph 3, of the ICCPR, according to which preventive custody of individuals awaiting trial should remain the exception. Finally, it was possible to appeal against a decision of an examining magistrate to order preventive detention, or to prolong it.

Mr. Kama stressed the importance of the cardinal rule, contained in article 14, paragraph 1, of the ICCPR, under which everyone "shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal". The publicity of the proceedings was especially important in order to avoid creating the impression of a partial and biased judicial system; all the criminal codes of francophone African countries provided for such publicity. "Competence" of the tribunal required a high level of professional training. In respect of the independence of the tribunal, General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985 had rightly called upon States to anchor this principle firmly in their constitution or legislation. Given that the nomination and promotion of judges and magistrates remained at the discretion of national Governments, however, the notion of an "independent judiciary" was relative and subject to qualifications.

[1] In the text of the African Charter on Human and Peoples' Rights, see Centre for Human Rights publication HR/PUB/90/1.

Ancillary to the above guarantees but nonetheless vital were other procedural guarantees, such as the prohibition against forcing the accused to confess guilt by duress, the presumption of innocence until proven guilty according to law, the right to be tried without undue delay and the right not to be tried for offences not proscribed by law (article 15 of the ICCPR).

Ms. Chanet reviewed available protective mechanisms against torture. She traced the history of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which, in essence, provided at once for a system of repression and of oversight in the struggle against torture. In the first category belonged article 2 of the Convention (obligation of States parties to take legislative measures to prevent acts of torture), article 3 (principle of non-refoulement of individuals to countries where they might be subjected to torture) and article 15 (prohibition against using confessions or statements obtained under duress as evidence in criminal proceedings). In the second category belonged the examination of periodic State reports (article 19) and inter-State and individual communications (articles 21 and 22). The Committee against Torture was effectively discharging its mandates under these provisions.

Ms. Chanet pointed to several mechanisms that could serve to check and penalize instances of torture. Among these it was possible to single out: (*a*) the prohibition itself of torture, as found in article 2 of the Convention against Torture and article 7 of the ICCPR, which did not allow for derogation or exception; (*b*) the supervision by a judge of the investigation process; (*c*) the guarantee that the accused could contact his family, doctor or legal representative(s); (*d*) the supervision of the minutes of the interrogatory process, including such information as the place of detention and the identity of the responsible judicial officials; (*e*) the obligation, incumbent upon the State, carefully to recruit judicial and prison officers and to provide them with basic education about human rights standards; and (*f*) the obligation of the State immediately to open an investigation whenever instances of torture or ill-treatment are reported.

Mr. Kama complemented Ms. Chanet's statement by surveying the mechanisms for the prevention of torture which were available at the national level. He stressed, in particular, the importance of the United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted in 1955, the Code of Conduct for Law Enforcement Officials, adopted in December 1979, and the Principles of Medical Ethics relevant to the Role of Health Personnel particularly Physicians in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 18 December 1982.[2] The mandate of the Special Rapporteur on torture, nominated by the United Nations Commission on Human Rights,

[2] See *Human Rights: A Compilation of International Instruments* (United Nations publication, Sales No. E.88.XIV.1), section G.

was vital since it enabled the Special Rapporteur to establish direct contacts with Governments and to ask them for information on legislative and administrative measures taken to prevent torture and to remedy its consequences.

Mr. Abdul-Aziz focused on the United Nations role in the search for alternative, non-custodial, sanctions to imprisonment. He recalled article 2 of the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in 1985, according to which "[a] just, fair and humane criminal justice system is a necessary condition for the enjoyment by citizens of all countries of fundamental human rights". The quinquennial United Nations congresses on crime prevention and the treatment of offenders had greatly contributed to the process of standard-setting in the protection of prisoners' rights. Apart from the instruments previously referred to by Mr. Kama, he singled out the Safeguards guaranteeing protection of the rights of those facing the death penalty (Economic and Social Council resolution 1984/50), the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (1989) (Economic and Social Council resolution 1989/65, annex), the Basic Principles of the Independence of the Judiciary, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules").[3]

Mr. Abdul-Aziz noted that the African regional preparatory meeting for the Eighth Crime Prevention Congress had put special emphasis on alternatives to imprisonment and on human rights in the administration of justice. It had been recognized that reliance on imprisonment in the African region was excessive, and that alternatives to incarceration were fully compatible with African traditions and values. Under the impulse of the recommendations of the regional preparatory meetings, the Eighth Congress was able to formulate and to adopt the United Nations Standard Minimum Rules for Non-custodial Measures ("The Tokyo Rules") (General Assembly resolution 45/110, annex).

In the use of non-custodial measures, The Tokyo Rules seek to strike a balance between the concerns of society for public safety and crime prevention and the individual rights of the offenders. Mr. Abdul-Aziz presented several guidelines for the implementation of The Tokyo Rules: (*a*) conditions or restrictions imposed on the offender must be regulated, so that undue intrusion upon privacy is avoided; (*b*) delimitations between forced labour and community work orders imposed by the courts must be defined by the law, and the financial aspects considered; (*c*) to ensure equality and fair-

[3] *Ibid.*

ness in non-institutional treatment, attention must be given to the special needs of certain categories of offender, such as the mentally ill or drug offenders; and (*d*) alternative sanctions should be an effective tool to alleviate prison overcrowding, without however leading to unwarranted additional control mechanisms.

Mr. Abdul-Aziz drew attention to other measures adopted by the Eighth Congress, such as the resolution on management of criminal justice and sentencing policies, the Basic Principles on the Role of Lawyers, as well as the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.[4] He emphasized that all of these rules and principles must be supported in every country by a clearly defined and recognized understanding of the aims of imprisonment *vis-à-vis* community-based penalties. Such an understanding was necessary to prevent both abuse and arbitrary use of authority, and to provide a framework for the development of policy and practice. Finally, education and dissemination of legal information, through schools and universities, educational and cultural institutions, were prerequisites for a better implementation of United Nations instruments in the field of crime prevention and criminal justice.

Discussion

Mr. Lessir emphasized the importance attached by Tunisia to the observance of human rights, which was underscored by the establishment, early in 1991, of a Tunisian Human Rights Commission. The State Security Court, previously used to try "political crimes", had been abolished and the practice of administrative detention was being curbed. Tunisia had taken measures to reinforce the independence of the judiciary, and procedural guarantees designed to improve the rights of the defence and of detainees had been adopted. Arresting officers were therefore now obliged to keep a log-book detailing the movements of accused persons.

Mr. Pheko inquired about the most effective protection of the rights of the defence in situations where the accused did not have the right or the means to choose his own counsel. Mr. Kama replied that, once a legal aid certificate had been granted to the accused, the judge himself designated counsel after consultations with the competent bar association (*ordre des avocats*).

Mr. Teguedi referred to the current reform of the prison system in Mauritania: prisons were now under the sole control of the Ministry of Justice and were no longer under the joint control of the Ministry of the Interior and the Ministry of Justice. He pointed out that the administration of justice in Mauritania was hampered by lack of resources and personnel, especially

[4] See Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990 (A/CONF.144/28).

qualified prison personnel and prison warders. Mr. Sendague referred to the establishment, in 1989, of the Moroccan Consultative Council on Human Rights, which had made specific recommendations on the practice of administrative detention to King Hassan, who had approved its recommendations.

Mr. Keke suggested that the United Nations should assist African countries to improve their human rights programmes. Such assistance should be primarily logistical rather than financial. It was necessary to popularize education and information in the field of human rights, as the general public in many African States was totally uninformed about human rights. His concerns were echoed by Mr. Mangueira, who pointed out that the Angolan parliament had reached agreement in principle to ratify the two Covenants. Mr. Habiyambere noted that while Rwanda had ratified many of the existing international human rights instruments, including most recently the Convention on the Rights of the Child, it was necessary to have these intruments translated into local languages. He suggested that the independence of the judiciary was of paramount importance and that Governments should abstain from attempts at influencing the judiciary. More specifically, he called upon the United Nations to intervene with Governments to ensure that sufficient resources were allocated for the administration of justice. In reply to these remarks, Mr. Kama emphasized that, while the United Nations could play an important role in human rights education and information, any education efforts had to start at home.

Counsellor Hussein underlined that the right to freedom of association and the right to strike were guaranteed in Egypt: a provision in the Egyptian Penal Code penalizing strikes had been overturned by a court decision on the ground that Egypt had become a party to the relevant ILO Convention. Mr. Hussein identified the right to be tried by a competent and independent tribunal as one of the most important principles of administration of justice. It implied that recourse to "people's tribunals", set up at the request of the executive, had to be avoided.

Mr. Posner asked what steps could be taken to curb and ultimately eradicate practices of ill-treatment and torture. Mr. Kama suggested that the right of an ill-treated individual to be examined by a doctor should be prescribed by law; the same was true for the obligation of arresting officers to inform the individual of his or her rights. Incommunicado detention, i.e. the denial of contact with the outside world, was hardly compatible with articles 7 and 10 of the ICCPR. Mr. Swepston recalled that article 10 of the Covenant was not the only instrument to prohibit ill-treatment of accused persons: thus, ILO Convention No. 29 on Prohibition of Forced Labour of 1930 had been held applicable to detainees by the ILO's Committee of Experts. Similarly, the ILO Convention on Discrimination in Employment of 1958 had been held applicable to the appointment of judges by the Committee of Experts.

Mr. Nguema remarked that the distribution of resources in the national budgets of many African countries was hardly judicious; the army and the police often benefited at the expense of the administration of justice. Furthermore, it was undeniable that the place of women in many national judiciaries was far from satisfactory. He therefore recommended the creation, at the African level, of an association of magistrates and judges, to be entrusted with the defence of the judiciary and the administration of justice.

In reply to Mr. Nguema's remarks, it was noted that, while most African constitutions proclaimed the principle of separation of powers, the independence of the judiciary could not be fully guaranteed as long as judges and magistrates were nominated and appointed by the executive. Mr. Kama supported the idea of an independent African association of magistrates and judges and echoed Mr. Nguema's concern that funds for the administration of justice in many African countries remained inadequate. Some of Mr. Nguema's suggestions had already been considered by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in 1985.[5] Ways and means had to be found to ensure that the mandate and the work of examining magistrates were not interfered with by, for example, the Department of Public Prosecution.

Mr. Badawi El-Sheikh criticized the frequently wide gap between the legal protection of the rights of the individual and such protection in practice. Periodic reports submitted by African States to international and regional human rights bodies should contain not only information about the legal system governing the administration of justice but also its practical application. A better and wider dissemination of the African Charter was necessary. Mr. El-Mehadbi seconded Mr. Badawi El-Sheikh's views on the practical problems in the administration of justice. Libya had ratified the African Charter and most international human rights instruments. There could not, however, be full respect for human rights if human rights education was not made obligatory in the curricula of schools and universities.

Mr. Akande recalled that Nigeria had been instrumental in the elaboration and implementation of the African Charter. With respect to the independence of the judiciary, he suggested that Governments should not only refrain from nominating and appointing judges and magistrates, but should also ensure their appropriate remuneration and grant them full protection in the discharge of their duties. Mr. Akande supported Mr. Badawi El-Sheikh's point that the African Commission should endeavour, either on its own initiative or in co-operation with the Centre for Human Rights, to disseminate the principles laid down in the African Charter; this necessitated a continued effort of education, including for judges and magistrates.

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[5] See *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1).

Mr. Umozurike recalled that no State had made reservations to any of the provisions of the African Charter. He considered that the African Charter did not permit certain forms of punishment, such as amputation of certain parts of the human body. While it was necessary to take into consideration different traditions and cultures, this should not detract from the fact that human rights standards were universal.

Working session III

ADMINISTRATION OF JUSTICE (*continued*)

Mr. Chongwe addressed the role of lawyers and the independence of the judiciary. He noted that the existence of an independent legal profession was necessary to give meaning to the basic rights of the defence, which were protected by the constitutions of virtually all countries. Governments should ensure that lawyers could work without intimidation, harassment or improper interference so as to be able to perform their functions properly. They should be able freely to consult with their clients within their own country and abroad; they should be free from threats of prosecution or any form of sanction for actions taken in accordance with recognized professional duties, standards and ethics.

An important means of buttressing the independence of lawyers was the right to form and join self-governing professional associations which represented their interests, protected their integrity and promoted their continued education. Professional independence should also be guaranteed for State law enforcement officers and legal officers entrusted with the drafting of legislation.

Considerable progress towards solving the issue of *locus standi* of lawyers had been made through the efforts of the Supreme Court of India. The jurisprudence of that court had made it possible for lawyers to take up "public interest litigation" on behalf of any concerned citizen who felt that there had been a violation of the rights of disadvantaged groups of the population. Mr. Chongwe recommended that the Indian example be emulated by African jurisdictions. Moreover, African lawyers should be entitled freely to advertise their services in public, as they were in other parts of the world.

The independence of the judiciary from executive and legislative pressure remained a cornerstone of democratic government. Such independence could not, however, be absolute. Judges should take into consideration the social and political context of the issues they were asked to adjudicate. The emergence of political pluralism in Africa carried both dangers and promises for the judiciary. In Mr. Chongwe's opinion, it was permissible for judges to subscribe to the political tenets of parties of their choice, provided that they did not participate actively in party activities.

Mr. Chongwe addressed the need for judges throughout the African continent to enjoy security of tenure. Judges should be appointed to perma-

nent posts and their security of tenure constitutionally guaranteed. In pluralist societies, security of tenure of judges should be at the centre of their independence from all quarters. Litigants should leave a courtroom with the feeling that justice had been done, without political manipulation and favouritism. Only thus could the African public at large come to respect the judiciary in Africa. It was clear, however, that much remained to be done to educate African populations about the importance of an independent legal profession and judiciary.

Mr. Abdul-Aziz considered topical issues of international co-operation in the field of crime prevention and criminal justice. The concern of the international community with crime prevention issues could not be separated from its concern about other socio-economic aspects of life, such as poverty, malnutrition, health, environmental protection, population control, refugees, maintenance of peace and security and protection of human rights. Systematic approaches to crime prevention should be pursued to facilitate the incorporation of crime prevention policies into national development strategies. Such approaches would also include the processes of decriminalization, depenalization and diversion, wherever possible, as well as procedural reforms (see General Assembly resolution 45/107 of 14 December 1990).

After outlining the history of United Nations efforts in the field, Mr. Abdul-Aziz turned to the work of the Committee on Crime Prevention and Control, the principal United Nations body providing guidance on the issue. In spite of its wide mandate, the Committee, consisting of 27 independent experts, had not enjoyed the recognition and the material support of its work that was desirable and necessary. Similarly, the regional United Nations Institutes for Crime Prevention and Criminal Justice had played a major role in promoting awareness of the need for more effective crime prevention and criminal justice reforms at the national level; moreover, they were useful means for the promotion of joint action in areas of common concern.

In this context, Mr. Abdul-Aziz underlined the particular problems encountered by the African Institute for the Prevention of Crime and the Treatment of Offenders (UNAFRI), established in Kampala, Uganda, in 1987. In spite of the widely recognized need for this Institute, its financial situation remained precarious and only three African countries had paid their assessed contributions for the biennium 1989-1990. Much of the work programme of the Institute had been seriously compromised, and Mr. Abdul-Aziz encouraged participants to convey to African Governments the urgent need for increased support of the Institute's programmes.

The speaker expressed the opinion that increased international co-operation in the field of crime prevention should be made a top priority. The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders had adopted a resolution, endorsed by the General Assembly (resolution 45/108 of 14 December 1990), calling for the creation of

an intergovernmental working group to elaborate proposals for a more effective crime prevention and criminal justice programme. This working group, consisting of representatives from 29 countries, would formulate its recommendations in August 1991, to be discussed at a ministerial meeting in Paris in November 1991.

Working session IV
IMPLEMENTATION

Mr. Aboul-Nasr reviewed the history and the work of the Committee on the Elimination of Racial Discrimination (CERD). Initially, CERD had interpreted its mandate narrowly, but in time, it had broadened the scope of its activities, extending them to domestic issues of States parties if they appeared to raise issues under the International Convention on the Elimination of All Forms of Racial Discrimination. Mr. Aboul-Nasr emphasized that racial discrimination was not a one-sided phenomenon; CERD had been concerned not only with racial discrimination against minority groups in countries with predominantly white populations, but also the reverse. In that respect, he noted that the Egyptian Penal Code raised several delicate problems as to its compatibility with the provisions of the Convention .

Broadly speaking, the work of CERD could be split into four principal categories: (*a*) the examination of periodic reports, due at two-year intervals, submitted by States parties to the Convention; (*b*) the consideration of inter-State complaints (if one State party referred to the Committee an issue of alleged racial discrimination in another State party, CERD would initiate an arbitration procedure; it was unfortunate that this procedure had not, so far, been resorted to); (*c*) the examination of individual complaints under article 14 of the Convention (again, only a few complaints had been entertained by CERD under article 14 so far, and only 14 States had recognized the Committee's competence to examine individual communications); and (*d*) the consideration of the situation in territories that did not enjoy autonomous government/rule.

Ms. Chanet outlined the reporting obligations of States under major international human rights instruments, as well as the work of the Human Rights Committee under the International Covenant on Civil and Political Rights. Reporting obligations of States were confined to those instruments that had established a monitoring body; these obligations were general and universal. The treaty bodies reviewed reports of States parties in open session, and the dialogue between the members of treaty bodies and State party representatives was usually wide-ranging and constructive. Attending experts often put searching and detailed questions about the implementation of the relevant instrument to State party delegations, and evasive answers were deemed unacceptable. Another principal feature of the reporting process was the periodicity of reports. The time-frame within which reports were due

varied from instrument to instrument, but the chairmen of the human rights treaty bodies had, on the occasion of their meeting in October 1990, agreed on general guidelines for the content and presentation of State reports.[6]

As to the method of examination of periodic reports, Ms. Chanet singled out the institution of a system of "country rapporteurs" for each report. This implied that one expert of a treaty body was entrusted with the preliminary examination of a report and the preparation of a list of specific questions to be put to the delegation of the State party concerned. This system had proved beneficial to the work of the Human Rights Committee, which had thus been enabled to engage in a thorough screening of States parties' compliance with the provisions of the ICCPR.

Ms. Chanet suggested that the system of examination of periodic reports of States parties was in need of harmonization, given the multiplicity of reporting obligations. It was timely to suggest that States should be allowed to prepare consolidated reports covering the entire range of human rights instruments they had ratified, leaving each treaty body to consider that particular part of the consolidated report falling within its competence. Furthermore, it was necessary to institute a system of follow-up to the examination of periodic reports, so as to give treaty bodies a means of monitoring the degree of compliance with their recommendations by States parties.

Ms. Chanet also surveyed the work of the Human Rights Committee under the ICCPR. The provisions of the Covenant were far-reaching, and the Committee's jurisprudence under the Optional Protocol had served to clarify the scope of many of the Covenant's provisions. Although article 4 of the Covenant provided for the possibility of derogations in times of "public emergency which threatens the life of the nation", there was a "hard core" of rights which did not admit of any derogation, such as the right to life (article 6), the prohibition of torture (article 7) and of slavery (article 8), and freedom of religion (article 18). Furthermore, the Covenant allowed restrictions in the enjoyment of certain rights for reasons specified therein. This was the case, for example, for the right of freedom of movement (article 12), the right to peaceful assembly (article 21) and the right of association (article 22). Such restrictions as were imposed, however, had to respect the principles of legality and proportionality.

The Committee's principal functions were threefold:

1. Consideration of periodic reports of States parties. Initial reports were due within one year after ratification or accession. During the examination of initial reports, questions on all the provisions of the Covenant were put to the State party representatives. Thereafter, periodic reports were due at five-year intervals. For each periodic report, a Committee working group prepared a detailed list of questions, grouped by chapters, which was made

[6] See A/45/636.

available to the State party delegation prior to the report's consideration. Moreover, the Committee had issued comprehensive guidelines for the content and the presentation of second and third periodic reports. The Committee had, so far, refrained from formulating general concluding observations after the consideration of reports, and each member was free to formulate his or her personal concluding remarks. The desirability of formulating general conclusions on behalf of the Committee as a whole had, however, been discussed informally.

2. Formulation of so-called general comments. These were what might be termed interpretative guidelines on the scope of application of selected provisions of the Covenant. Over the past decade, the Committee had adopted more than 20 general comments, clarifying the scope of important rights such as the right to life (article 6), the right to a fair trial (article 14) and the prohibition of discrimination (article 26).

3. Consideration of individual complaints under the Optional Protocol to the Covenant. The confidential procedure under the Optional Protocol had, since 1977, developed into a highly successful mechanism for examination of individual complaints. A total of 55 States had ratified the Optional Protocol and several countries, including Australia, Brazil, Poland and the Union of Soviet Socialist Republics had served notice of their intention to become parties to the Protocol in the near future. Over the years, the procedure had gradually become better known, although it was still relatively sparingly resorted to in African countries. As of July 1991, more than 150 cases were pending before the Committee. Under the Optional Protocol, the Committee operated by consensus; however, members retained the right to append individual opinions to the Committee's final decisions on the merits—so-called views under article 5, paragraph 4, of the Optional Protocol. Although the Committee's views were not binding upon States parties and could not be enforced, the record of compliance with the Committee's decisions on the merits was good: some States parties had changed their legislation in response to the Committee's decisions while others had released prisoners after the Committee had requested this. So as to strengthen the legal value of its views, the Committee had, in the summer of 1990, nominated a Special Rapporteur for follow-up on views, whose mandate was to make periodic inquiries of States parties as to their compliance with the Committee's views and to report on his findings to the Committee.[7]

Mrs. Santos Pais reviewed the history of the Convention on the Rights of the Child as well as issues related to its implementation. The unprecedented adherence to the Convention, which had entered into force on 2 September 1990, only nine months after its adoption, and which had been rati-

[7] See *Report of the Human Rights Committee, Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40* (A/45/40), paras. 632-635 and annex XI.

fied by 84 States as of 31 May 1991,[8] had been made possible by the spirit of consensus prevailing during its elaboration and by the many compromises which had been made between different legal systems and philosophical concepts. The legal recognition of children's rights and of the specificity of their needs and rights (including the right to freedom of opinion and expression), as well as the obligation to take those rights into consideration *vis-à-vis* society and state power, were the culmination of a long struggle.

Mrs. Santos Pais suggested that the implementation of the Convention should be based on three principal pillars: information and education, appropriate State action and international co-operation. First and foremost, it was necessary to disseminate the text of the Convention, and to demystify its sometimes technical character. At the national level, the institution of National Commissions for Children's Rights was an appropriate means of furthering education on children's issues and reviewing governmental policies bearing upon children's rights. The creation of ombudsmen for children had frequently been suggested; such an independent institution should be guided by the interests of the child in its actions. Finally, workshops, seminars and the publication, under United Nations auspices, of studies and brochures on children's rights, as well as continued co-operation between intergovernmental and specialized agencies, were required effectively to further the aims of the Convention. In this context, the Committee on the Rights of the Child was uniquely placed and had to assume a special responsibility.

States had important obligations in the implementation of the Convention. Under article 2, they committed themselves to "respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parents' . . . race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status". Measures, whether legislative or administrative, contrary to the rights set forth in the Convention had to be avoided: article 4 included an obligation to act for the safeguarding of children's rights. This obligation was not, however, unconditional, as for instance in the field of economic, social and cultural rights, where protective measures had to be taken "to the maximum extent of available resources". In all State action, the primary guiding principle, as set out in article 3, must be the best interests of the child.

The Convention spelled out the need for international co-operation in the protection of children's rights. Several provisions called for the adoption of bilateral or multilateral conventions aimed at, for instance, preventing illicit traffic in and sale of children (article 35) or facilitating the recovery of alimony payments abroad (article 27, paragraph 4). International exchange of information and scientific data aimed at furthering the status of children

[8] As of 21 October 1991, the Convention had been ratified by 100 States.

was called for in other provisions; this concerned, *inter alia*, medical treatment and re-education of disabled children (articles 23 and 24, paragraph 4). The Committee on the Rights of the Child had a decisive role to play in the promotion of international solidarity and co-operation. Under articles 44 and 45, States parties undertake to submit to the Committee periodic reports on the measures adopted to give effect to the rights enshrined in the Convention. These reporting obligations were comprehensive, and Mrs. Santos Pais expressed the hope that the Committee would be able to engage in a wide-ranging and fruitful dialogue with States parties from the very beginning.

Discussion, working sessions III and IV

Mr. Badawi El-Sheikh asked how the Committee on the Elimination of Racial Discrimination took into account, during its consideration of periodic reports, occasional references by some States parties to their colonial background, and the problems that this might raise in the application of some of the Convention's provisions. Mr. Aboul-Nasr replied that CERD had rejected the notion of positive discrimination; in the field of protection of minorities, African countries should not benefit from special treatment and should not use the excuse of their own cultural traditions. It was worth recalling that in some African countries minorities ruled over majorities.

Mr. Badawi El-Sheikh further inquired what African lawyers did or could do to enable the poorer segments of the population to gain access to the courts. Mr. Chongwe replied that legal aid for the poor was available, and that African bar associations made available legal aid in appropriate circumstances.

Mr. Umozurike asked whether it was not possible for African bar associations to become more closely identified with the protection of human rights by, for example, urging their members to refuse to co-operate with flagrant violators of human rights. Mr. Nguema conceded that in some African countries Governments did obstruct the independent work of the legal profession. Magistrates and judges had a duty to instruct themselves on international standards in the field of human rights. Too few appellate courts and supreme courts invoked the jurisprudential precedents of international or regional human rights instances in their decisions, the Supreme Court of Zimbabwe being a notable exception. As to the necessity of protecting minorities, Mr. Nguema cautioned that, if full minority rights protection were granted to all groups, clans and tribes of Africa, efforts at "national reconciliation" might suffer serious setbacks.

Mr. Shiddo criticized the United Nations human rights programme for its insensitivity to different values, cultures, ethnic practices and religious traditions in different parts of the world. Unless the United Nations succeeded in taking into account these differences, there was a danger that it would fail to implement the standards its organs had set.

Mr. Belibi underlined the inviolability of the rights of the defence: in that context, the rights of the legal representatives of the accused deserved equal protection. Mr. Belibi acknowledged that the examination of periodic reports by treaty bodies was extremely useful but he expressed the belief that those reports should be more accessible to the African judiciaries. Ms. Chanet replied that several resolutions of the Human Rights Committee urged a wider dissemination of its work and reports. In reply to a question from the floor, she added that under article 40 of the Covenant the Committee was free to request supplementary reports from States parties if it deemed this to be necessary.

Mr. El-Mehadbi recommended the institution of a United Nations fund in support of the administration of justice. Its financing could be ensured by levying 1/4 per cent from the military budgets of all countries. The proposal was endorsed by several of the participants.

Mr. Kama paid tribute to the fight of the African legal profession for its independence and against executive obstruction. The independence of the legal profession was a *conditio sine qua non* for a proper administration of justice. In his opinion, lawyers should benefit from a certain "immunity of speech" (*immunité de la parole*). Mr. Kama added that political constellations in Africa did not enable the judiciaries to operate fully independently. Mr. Gaye supported Mr. Kama's comments and underlined the difficult circumstances under which African lawyers performed their duties. He called for a reinforcement of scientific information in the field of human rights, which should be disseminated through modern means of communication.

Mr. Schmidt complemented Ms. Chanet's remarks about the Human Rights Committee's work under the Optional Protocol. Although the procedure itself was confidential, all of the Committee's final decisions were made public—most of them had been published in two volumes.[9] The Committee's work under the Optional Protocol was a good example of how an increasing workload could be met by procedural flexibility. Thus, the Committee had instituted the mandate of a special rapporteur for new communications, who screened new communications received and transmitted them, where appropriate, to States parties. Similarly, the Committee's Working Group on Communications had been empowered to decide on the admissibility of communications, subject to certain conditions.

It remained to educate the public further about the procedure, possibly in collaboration with national and/or regional United Nations Information Centres. While many African countries had ratified the Optional Protocol,

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[9] *Selected Decisions of the Human Rights Committee under the Optional Protocol*, vol. I—Second to sixteenth sessions (United Nations publication, Sales No. E.84.XIV.2); vol. II—Seventeenth to thirty-second sessions (Sales No. E.89.XIV.1).

the number of complaints from African States parties remained limited; no complaints had been received from a number of them.

Over the years, the Committee had developed a solid body of jurisprudence on many provisions of the Covenant. While it was difficult to single out specific decisions, those addressing issues under article 14 (right to a fair trial), article 26 (prohibition of discrimination) and article 27 (protection of minorities) deserved particular attention. The Special Rapporteur for follow-up of views was discharging his mandate effectively, and the first replies from States parties to his requests for follow-up information had been encouraging.

Mr. Roux referred to the specificities of the environment in which lawyers had to operate. In Namibia, for instance, many lawyers had been trained in countries applying the principles of common law, but Namibia's laws had been drafted on the basis of Roman/continental law. As to the independence of the judiciary, the only way to guarantee its freedom from interference was to avoid the appointment of judges by the Government; judges should be appointed through the local bar councils.

Mr. Lessir emphasized that the accused should at all times be notified and fully aware of his rights. It should be mandatory for States to incur the legal expenses of the accused if the latter was indigent. Like previous speakers, Mr. Lessir noted the link between development and enjoyment of human rights. Mr. Akande suggested that co-operation between African countries in the field of crime prevention and drug abuse should be strengthened. He took issue with Mr. Chongwe's remark about the compatibility of the judge's office with his/her membership in a political party and recommended that, upon his/her appointment, a judge should renounce membership in a political party. Governments should not be entitled to review the appointment of judges before their retirement, except under certain narrowly circumscribed circumstances.

In reply to questions about the "conservatism" of African lawyers, Mr. Chongwe reiterated that practising lawyers in Africa should be allowed to adopt the modern litigation practices followed in Western Europe or the United States. In reply to a question about the practice of posting bail for individuals charged with a criminal offence, he suggested that any decision to grant bail should take into account the means of the accused. The not uncommon practice of posting bail at an amount far beyond the means of the accused implied denying him bail altogether.

Mrs. Badran reviewed the challenges of implementation of the Convention on the Rights of the Child, with specific reference to Africa. The implementation of the Convention required commitment on different levels: (*a*) political commitment; (*b*) commitment of human resources; (*c*) awareness and support of the public (administrators, social workers and parents should be informed about the contents of the Convention); and (*d*) the need for

(national) mechanisms and structures to facilitate the implementation of the Convention.

As to the protection of Africa's children, Mrs. Badran noted that the statistics, notably for sub-Saharan Africa, were alarming. They showed that children in that part of the world were among the least protected. Infant mortality remained higher than in other parts of the world, while immunization against diseases, school enrolment ratios and the number of doctors per capita were lower; in addition, economic conditions were hardly conducive for the effective protection of children. Notwithstanding, Africa did now promote children's issues and, at the May 1991 OAU summit, African education ministers had called upon their Governments to promote awareness and protection of children's rights.

The Egyptian National Council for Children and Motherhood might possibly serve as a model for other countries. The Council had set itself two priorities: education of the lower socio-economic strata of society and the protection of children below the age of six. The Council hoped to review every piece of Egyptian legislation dealing with children's issues.

Mr. Badawi El-Sheikh called upon African Governments to display the necessary political commitment to ensure adequate funding for the protection of children's rights; the issue had to become a top priority for African Governments. Mrs. Santos Pais endorsed Mr. Badawi El-Sheikh's comments and added that as wide a public dissemination of periodic reports as possible was specifically envisaged under article 44, paragraph 6, of the Convention.

Working session V

REGIONAL AND NATIONAL INSTITUTIONS

Mr. Umozurike reviewed the contents of the African Charter on Human and Peoples' Rights and the work of the African Commission.

In the field of civil and political rights, a number of rights enshrined in the Charter were non-derogable, such as freedom from torture and inhuman and degrading treatment, the principles of non-discrimination, equality and human dignity, and the prohibition of slavery and the slave trade. Other rights might be the subject of derogations, such as the right to integrity of the person, freedom of association and freedom of movement.

In the field of economic, social and cultural rights, the Charter protected, for instance, the right to work under equitable conditions, the right to equal pay for equal work, the right to health care and medical attention, and the right to education. These rights imposed immediate obligations upon States parties and were not progressive or hortatory in character.

Finally, the Charter provided for the recognition of certain "group rights", including self-determination, the right to resort to any means to free a people from colonialism, non-domination of one people by another, and control over natural resources. The provisions of the Charter superseded all previous conflicting traditional, religious and customary practices. In its interpretation of the Charter, the Commission could draw inspiration from international law on human and peoples' rights (article 60), from general principles of law recognized by African States, and from legal precedents and doctrine (article 61).

The African Commission consisted of 11 members and a secretary. It assumed its functions on 2 November 1987 and established its headquarters in Banjul, The Gambia, although some of its sessions had been held in other African cities, such as Benghazi, Lagos, Dakar, Libreville and Cairo. The functions of the Commission were, with some degree of simplification, twofold (article 45 of the Charter). The first was the promotion of human rights and the principles of the Charter. Thus, the Commission endeavoured to disseminate information about the Charter and had encouraged Governments to proclaim October 21 of each year "human rights day". The second function was supervisory and protective. The Commission could receive and consider inter-State complaints (articles 47 to 54) as well as communications from non-State entities, if these related to a "series of serious or massive viol-

ations of human and peoples' rights'' (article 58, paragraph 1). The procedure was confidential, although Mr. Umozurike pointed out that the issue of confidentiality had recently become an issue of debate. Other functions could be entrusted to the Commission by the Assembly of Heads of State and Government of OAU.

Mr. Umozurike noted that the African system did not include a court with the power to adopt binding decisions, and that the Commission only implemented what might be termed ''semi-judicial'' procedures. Since its inception, the Commission had established co-operative relations with the United Nations and with UNESCO, as well as with the European Economic Community, the European and Inter-American Commissions, etc. Thus far, 40 out of 51 African States had ratified the Charter, but even non-parties indirectly participated in the Commission's work, as they took part in the election of the commissioners and the preparation of the annual report. Mr. Umozurike conceded that some problems existed with respect to the implementation of the Charter at the national level. He suggested that each country should convene a conference to review the place of the Charter in the domestic legal system.

Mr. Nguema reviewed the African experience with human rights and the work of the African Commission. The right to development was at the heart of African human rights policy. Two main currents could be distinguished. Under what Mr. Nguema referred to as the ''negativist approach'', it was assumed that African countries did not need to adhere blindly to the Western approach to human rights. This approach, which Mr. Nguema rejected, was primarily embraced by those in power and was rooted in fears of Western imperialism and the principle of non-interference in the internal affairs of sovereign States. The ''positivist approach'', on the other hand, accepted the Western concept of human rights and was based on inspirations of a thematic as well as a symbolic nature.

The African experience with human rights was based on a number of phenomena. Among these, Mr. Nguema identified the centralization of political power and the monopolization of power. Many African countries were faced with what could be termed ''political absolutism'', and the institutions of presidents designated for life, as well as one-party systems, were common. Military *coups d'état* remained a common feature of African politics, as did, in Mr. Nguema's opinion, patrimonialism, i.e. a traditional type of social structure in which the chief or ruler maintained authority through his officials, army, etc. who were retained by him and whose loyalty was to him personally. Such practices, in turn, encouraged favouritism and corruption. Finally, there was the phenomenon of ''tribalization'' of the State, which implied that the majority of economic development projects were channelled towards the native province of the head of State.

Faced with this situation, African populations had begun to formulate a number of objectives of a political, economic, social and cultural nature. In the field of political rights, the principal demands concerned freedom for all, respect for human dignity, legality in the sense of equality before the law, and justice. Demands for a better record of protection of human rights were part of the ambition of African peoples.

The African Commission had embarked on its formidable task under difficult circumstances. It lacked adequate financial and logistical support for its work. There were, for instance, insufficient personnel and inadequate means for purposes of gathering information. The Commission's two annual sessions had been threatened by financial constraints, and the Commission had recently been forced to shorten the duration of its sessions. Finally, the confidentiality of the complaints procedures was hardly conducive to addressing human rights violations with the necessary celerity; the procedures were too cumbersome to allow for quick and effective decision-making.

Mr. Akande reviewed national institutions for the promotion and protection of human rights, identifying those institutions and assessing their efficacy in the performance of the duties for which they had been established. Perhaps the first and most important "institution" was the written constitution of a country. As the basic law of the land, it was the *Grundnorm* from which all other institutions derived their legality and against which their performance was measured and judged. The written constitutions of most countries contained a section providing for fundamental human rights, including provisions for the enforcement of these rights; an example was chapter IV of the Constitution of the Federal Republic of Nigeria (1989).

The judiciary was the second important institution for the protection of human rights. Most constitutions clearly defined the role of national courts in respect of the protection of fundamental rights. The question, however, was how effective the courts were in the discharge of this duty; that courts worldwide had been unable to define precisely what was "reasonably justifiable" merely underscored this question. In a landmark Nigerian case, the court had held that the words "reasonably justifiable in a democratic society" had to be read in the context of the Constitution and, more particularly, of the chapter on fundamental human rights. Hence, rights could only be abrogated, if at all, to the extent that this was essential for the sake of some recognized public interest. In Mr. Akande's view, this lack of an acceptable definition left room for unnecessary legislative encroachment on the enjoyment of human rights.

National bar associations were equally vital for the protection of human rights. Lawyers were in a unique position to provide protection to the ordinary citizen against abuse of governmental authority by government officials. A recent policy statement issued by the Nigerian Bar Association ("The law as an instrument of good government") clearly defined the re-

sponsibility of lawyers *vis-à-vis* State action "which offend[ed] the principles of the Rule of Law and Natural Justice or which flout[ed] the role of the courts and the independence of the judiciary". In this context, Mr. Akande called for the institution of legal aid associations, which should be designed to ensure equal access to justice for all.

Finally, other non-governmental organizations had proved to be useful watchdogs in cases of violations of human rights by African Governments. These organizations could, and did, file court actions on behalf of the poor and disadvantaged alleging breaches of fundamental human rights provisions. The issue of *locus standi* of these organizations, however, remained a problem in need of a commonly accepted solution. In India, for instance, some public interest organizations were now entitled to initiate so-called public interest litigation on behalf of individuals belonging to the socially and/or economically weaker strata of society. This felicitous procedural innovation had done away with rigid and obsolete rules of *locus standi* in public interest litigation, and Mr. Akande recommended the emulation of the Indian example by other countries.

Mr. Chammari presented a survey of the role of national institutions for the promotion and protection of human rights in Africa. The necessity of such national institutions had long been acknowledged by the United Nations. He said that the General Assembly, in a resolution adopted on 19 December 1966, had recognized that United Nations activities aimed at the promotion of human rights could only be effective if adequate channels of communication between the national and international level were put into place.

In September 1978, a United Nations seminar[10] in Geneva had recommended a number of important "guidelines for the structure and functioning of national institutions", all of which retained their full validity. According to these guidelines, the functions of national institutions should include: (*a*) the dissemination of information about human rights issues to the Government of the Member State concerned and to its population; (*b*) activities designed to further the awareness of, and respect for, human rights among the population; (*c*) the consideration of any particular situation arising at the national level which the Government might decide to submit to it and the formulation of recommendations in that respect, within the limits of the institution's mandate; (*d*) advising the Government on questions regarding human rights issues; (*e*) the constant scrutiny of laws, regulations and judicial decisions concerning the promotion of human rights; and (*f*) the performance of such additional functions as might be delegated to it by the Government, in the light of the Member State's obligations under international human rights instruments.

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[10] Seminar on National and Local Institutions for the Promotion and Protection of Human Rights (Geneva, 18-29 September 1978) (ST/HR/SER.A/2 and Add.1).

Mr. Chammari noted that approximately 30 national human rights commissions or institutions had been established worldwide. In Africa, eight such national institutions had been created, and Mr. Chammari explained in detail their structure, functions and powers. They concerned the following countries:

Togo (established by law 87.09 of 9 June 1987);

Benin (established by law 89-004 of 12 May 1989);

Cameroon (established by law 90/1459 of 8 November 1990);

Uganda (established on 16 May 1986);

Senegal (established on 8 January 1990);

Zimbabwe;

Morocco (established by decree 1.90.12 of 20 April 1990); and

Tunisia (established by law 91-54 of 7 January 1991 and operative since April 1991).

Mr. Chammari said that the most illuminating case study of an African national institution was perhaps the Togolese Human Rights Commission, whose 13 members were nominated not by the national administration but by a corps of 11 (professional) associations of the country. The Commission benefited from extensive powers; official complaints could be lodged with the Commission, but the alleged violation had to relate to rights specifically protected by legislative provisions. In the spring of 1990, at the request of the Togolese League for Human Rights, the Commission had initiated an investigation into alleged ill-treatment of political prisoners.

In the final analysis, national institutions for the protection of human rights performed a useful pedagogic function; however, their powers, with the notable exception of the Togolese Commission, remained relatively limited, especially in respect of the right to consider and adjudicate complaints. Mr. Chammari emphasized that national institutions should not simply be substitutes for non-governmental organizations, but that NGOs should assist national institutions in the effective discharge of their duties.

Discussion

Mr. Belibi criticized Mr. Chammari's assessment of the role of national institutions for the protection of human rights in Africa as too pessimistic and noted that the National Human Rights Commission of Cameroon enjoyed wide powers. Mr. Nyakairu explained the competence and the work of the Ugandan Human Rights Commission, as well as those of the Ugandan Ombudsman. Uganda had also established a Child Law Review Committee, much of whose work was being carried out by women. Mr. Atsumikoa complemented Mr. Chammari's description of the powers of the Togolese Human Rights Commission.

Mr. Kama criticized the powers of the African Commission on Human and Peoples' Rights, which were limited in comparison to those attributed to the Human Rights Committee under the ICCPR. Given the undeniable "breath of democracy" that was now perceptible throughout the African continent, he suggested that it was time to think about amendments to the African Charter, with a view to broadening the competence of the African Commission.

Working session VI

OTHER INTERNATIONAL ORGANIZATIONS

Mr. Meriboute reviewed the mandate and the responsibilities of the International Committee of the Red Cross (ICRC) in international armed conflicts as well as internal armed conflicts, including the recent conflicts in Ethiopia, Sudan, Somalia and Mozambique. Founded in 1863 by Henri Dunant, ICRC could be seen as an international organization *sui generis*, whose work was complemented by that of 147 National Committees of the Red Cross or the Red Crescent throughout the world.

In the field of international armed conflicts, the work of ICRC was governed by the four Geneva Conventions of 1949 and the First Additional Protocol of 1977.[11] These instruments had been ratified by more than 160 Governments, thereby making them virtually universally accepted. Article 126 of the Third Geneva Convention of 1949 (relative to the protection of prisoners of war) gave ICRC an express mandate to intervene with States parties on behalf of prisoners of war; this was accompanied by the right, under article 143 of the Fourth Convention (dealing with the protection of civilians in wartime), to intervene on behalf of civilians interned in the course of international armed conflicts. Article 126 of the Third Convention had notably served as the legal basis for ICRC intervention during the recent armed conflict in the Persian Gulf. In the framework of its activities, ICRC regularly visited prisoners of war and provided them with material assistance.

In the field of internal armed conflict, the legal bases for ICRC intervention were considerably more limited. Prior to 1977, only article 3 of the four Geneva Conventions of 1949 (a provision which is common to all the Conventions) had allowed for limited intervention; its formulation was, however, far too vague to ensure an appropriate protection of civilian populations in internal conflicts. This had been the rationale behind the adoption of the Second Additional Protocol of 1977, which formulated detailed rules for the conduct of the hostilities, prohibiting, for example, attacks on water reservoirs, dams, nuclear power plants, etc.; the Second Additional Protocol had been ratified by 93 countries.

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[11] See *International Red Cross Handbook*, Twelfth edition (Geneva, July 1983).

In instances of internal trouble and strife, Mr. Meriboute conceded that the ICRC role remained limited; it retained, however, the right to act and intervene on the basis of article 5 of its Statutes. Since the end of the First World War, this statutory right of intervention had been considerably developed, and at present it incorporated the protection of virtually all the minimum standards laid down in the Third Geneva Convention relative to the Treatment of Prisoners of War, of 12 August 1949.

Finally, ICRC had adopted a mixed approach to internal armed conflicts with international repercussions: its representatives had invoked the rules governing international armed conflict wherever governmental forces had engaged the armed forces of a foreign power (this, for example, had been the case in Viet Nam), and the rules governing internal armed conflict wherever it had wanted to engage in discussions with the armed forces, hostile guerrilla movements and the central authority.

Mr. Meriboute drew a clear distinction between the rules of warfare governed by the Geneva Conventions and those governed by The Hague Conventions.[12] The former sought to protect against abuses and excesses in the use of armed force, whereas the latter laid down rules for the very use of armed force, for example the prohibition against attacking civilians, women and children. Furthermore, several conventions prohibited the use of certain categories of weapon, such as fragmentation bullets, cluster mines and incendiary weapons such as napalm.

Mr. Kimbimbi surveyed the principles of humanitarian law and the work of UNHCR. He noted the non-political aspect of the work of UNHCR and emphasized that, out of approximately 15 million refugees throughout the world, some 5 million lived in Africa. All the rights enshrined in international human rights instruments extended to refugees.

Most refugee movements were a direct consequence of civil wars and internal armed conflicts. Furthermore, the phenomenon of internally displaced persons was becoming more and more widespread: internally displaced persons had the same needs and rights as refugees, and it remained unfortunate that there was no single United Nations focal point to address their needs. It was noteworthy that most refugees had found temporary asylum and refuge in poor countries, and in many instances refugees had moved into areas which were themselves underdeveloped. Reaching refugees in a timely manner and assisting them effectively was frequently an exacting task, and criticism of delayed action on the part of UNHCR was unjustified in such circumstances.

Among the international instruments governing the treatment of refugees, Mr. Kimbimbi singled out the 1951 Convention relating to the Status

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[12] *Ibid.*

of Refugees and its 1967 Protocol; 107 States had ratified one or both of these instruments.[13] The Convention defined the notion of "refugee" and protected certain rights of refugees, such as freedom of religion and access to education, health care and employment. Refugees had to conform to the laws of the host country. Particularly important was the principle of "non-refoulement": no refugee could be returned to his/her country of origin against his/her will.

At the African level, the OAU had adopted the Convention of 10 September 1969 governing the specific aspects of refugee problems in Africa[14]; it had entered into force in June 1974 and had been ratified by States parties throughout the African continent. The OAU Convention had broadened the notions of "refugee" and of "non-refoulement", imposing an obligation upon States parties to grant at least temporary asylum. It obliged refugees not to engage in subversive activities, and article 5 laid down several rules for their voluntary repatriation. Mr. Kimbimbi emphasized that most African countries practised liberal asylum policies and that refoulement remained the exception, although some problems concerning the physical integrity of refugees had been encountered.

Mr. Kimbimbi stressed that refugee law was not static and that new concepts aimed at addressing and solving refugee situations were being actively considered. The first concept was prevention and warning: it was necessary to prevent refugee situations from arising in the first place, and the United Nations and UNHCR had an important role to play in this respect. The second issue concerned the solution of refugee situations: voluntary repatriation of refugees, governed by carefully circumscribed rules, remained the only reasonable and ultimately practical solution. This had been realized by the international community in recent instances, for example in the spring of 1991 in respect of Kurdish refugees, the Angolan peace agreement and the Western Sahara agreement.

Mr. Swepston focused on the role of ILO in the protection and promotion of human rights and surveyed international labour standards. ILO was an effective defender and promoter of human rights, although the term "human rights" did not appear in its founding statutes. While ILO aims were entirely consistent with those of the United Nations in that respect, its methods and approaches were significantly different. This complementarity made ILO and the United Nations excellent partners in the field.

Tripartism was the most salient feature of ILO structure; indeed, it was the only international organization where Governments did not have all the

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[13] As at 31 October 1991, a total of 109 States had ratified either or both the Convention and/or the Protocol. *Human Rights: A Compilation of International Instruments*, *op. cit.*, section H.

[14] For the text, see *Collection of International Instruments Concerning Refugees*, UNHCR (Geneva, 1990) (HCR/TP/1).

votes. Tripartism meant representation and votes for workers' and employers' organizations and associations as well as for Governments. Since its creation in 1919, ILO had produced a remarkable body of international labour standards, often referred to as the "International Labour Code": 172 Conventions and 177 Recommendations, which had recorded a total of some 5,650 ratifications.[15] These instruments covered a wide range of issues concerning the fundamental human rights, conditions of work and social welfare of working people.

Conventions became binding upon States parties once they had been ratified; recommendations were non-binding guidelines on the adoption of social policies at the national level. While reservations to ILO Conventions were not permissible, many Conventions incorporated so-called flexibility clauses allowing Governments to choose from among various options for their implementation.

The supervisory mechanism of ILO instruments was very different from that of United Nations human rights instruments: one supervisory body, the Committee of Experts, monitored the implementation of all the Conventions, which significantly eased the reporting burden of States parties. Reporting obligations under ILO Conventions varied as to their periodicity: depending on the issue covered by a Convention, States pledged to report periodically, at intervals varying from one to four years, on measures taken to implement obligations assumed under any given Convention.

The Committee of Experts consisted of 20 independent experts and acted as a quasi-judicial body. Each year, it reviewed more than 2,000 reports, which called for a heavy secretariat input. The Committee's annual report contained a large number of comments and questions on the implementation of ratified Conventions. It was reviewed by a tripartite committee at each session of the International Labour Conference, which could call Governments before it to inquire about action they had taken or failed to take in respect of ratified Conventions or about their responsibilities under the ILO Constitution. There were also several complaints procedures which, however, had seldom been resorted to until recently.

Mr. Swepston noted that, while the majority of ILO standard-setting concerned economic, social and cultural rights, any attempt at categorization of rights was fraught with dangers. Some of the rights most clearly within the ILO mandate, such as the right to freedom from discrimination, freedom from forced labour and freedom to join or form a trade union of one's choice, did not fit neatly into any category; ILO itself considered all human rights to enjoy equal priority.

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[15] The texts of ILO Conventions and Recommendations are obtainable from the International Labour Office, Geneva.

In the field of administration of justice, ILO sought to ensure that no discrimination occurred on the basis of race, ethnic origin, etc. The guarantee of the independence and impartiality of judicial authorities was one of the principal ILO tasks, protected by provisions of the Discrimination (Employment and Occupation) Convention of 1958 (No. 111). The Forced Labour Convention of 1930 (No. 29), which had been ratified by 43 African States, stipulated that forced labour could not be imposed on detainees, accused persons, etc. The Abolition of Forced Labour Convention of 1957 (No. 105) complemented this instrument.

In the discharge of its mandates, ILO had institutionalized co-operation and collaboration with the United Nations and its specialized agencies. The most active collaboration was with the Committee on Economic, Social and Cultural Rights: whenever this body examined periodic reports on articles 6 to 10 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), the instrument which corresponded most closely to the ILO mandate, ILO furnished a summary of the State party's implementation of such relevant ILO Conventions as it had ratified on the subjects covered by the aforementioned provisions. ILO also co-operated with the Human Rights Committee and other human rights treaty bodies, and was represented in the Commission on Human Rights and its Sub-Commission.

Discussion

Mr. Bota emphasized that the refugee problem in today's world had assumed such proportions that it could not be solved by UNHCR alone. Disparities in approaches to the solution of refugee issues were perhaps best encapsulated in the fact that Sweden spent $78 per day per refugee, whereas UNHCR spent no more than $36 per year per refugee.

Mr. Badawi El-Sheikh inquired about UNHCR treatment of collective expulsions and about co-operation between OAU and UNHCR in respect of refugees in Africa. Mr. Roux inquired about the type of assistance that UNHCR might provide to countries in the drafting of refugee legislation.

Mr. El Mehadbi observed that the implementation of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol was beset by many difficulties in that too many reservations had been entered by States parties to these instruments; in his opinion, reservations had to be kept to a strict minimum.

In reply to questions from the floor, Mr. Kimbimbi explained that economic migrants did not fall within the mandate of UNHCR. Co-operation between OAU and UNHCR was envisaged under articles 2 and 8 of the 1969 OAU Refugee Convention; several African countries had given UNHCR a mandate to ensure the proper implementation of this Convention. As to the permissibility of reservations, Mr. Kimbimbi noted that many pro-

visions of the 1951 Convention, including those addressing the issue of non-refoulement, did not admit of any reservations. The legal status of refugees was governed by the domestic laws of the host State. UNHCR further sought to promote the adoption of domestic legislation relating to refugees, in particular where provisions of the relevant international instruments had to be incorporated into national legislation. Legislative assistance could take various forms, and had recently been provided to Malawi and Zimbabwe, among others.

Working session VII

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Mr. Badawi El-Sheikh assessed the status of economic, social and cultural rights in Africa. He stressed the indivisibility and universality of human rights and recalled the "split" of the two United Nations Covenants into two instruments protecting, on the one hand, civil and political and, on the other hand, economic, social and cultural rights. In his opinion, this split was due to the Western States' reluctance to legislate on economic rights.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) enjoyed widespread but not universal acceptance: 98 countries had ratified it as of May 1991. Several of the rights enshrined in the Covenant were complemented by international agreements adopted under the auspices of United Nations specialized agencies, such as UNESCO and WHO. States parties to the Covenant undertook to adopt gradual measures to ensure the enjoyment of economic, social and cultural rights; the commitment was thus not immediate upon ratification.

The legal framework for protection of economic, social and cultural rights in Africa included the OAU Charter, the African Charter of Human and Peoples' Rights and the Treaty Establishing the African Economic Community. The OAU Charter called for co-operation among African States in the field of economic development. Mr. Badawi El-Sheikh noted that the African Charter of Human and Peoples' Rights did not refer to progressivity in the implementation of economic rights; this meant that the commitments were immediate, which in his opinion was somewhat illogical given the African economic context. He suggested that wherever African countries could not give full meaning to economic, social and cultural rights they should adopt legislative measures to encourage the implementation of these rights.

Mr. Badawi El-Sheikh emphasized that economic development remained primarily Africa's own responsibility. A prerequisite for the enjoyment of economic, social and cultural rights was the existence of equal opportunities for all; this, in turn, made it necessary adequately to protect the rights of the weaker strata of African society.

Mr. Bota explained the rationale as well as the preparatory activities for the 1993 World Conference on Human Rights. Human rights had been a key to recent political developments and growing democratization throughout the world. Seen against this background, the organization of a World

Conference on Human Rights was a most timely endeavour. It should provide an opportunity for taking stock following the major political changes that had taken place around the world and should build upon the renewed willingness to engage in international co-operation by exploring new ideas and mapping a future course of action, well into the twenty-first century, for the United Nations human rights programme.

By resolution 44/155 of 18 December 1990, the General Assembly decided unanimously to convene the World Conference and asked the Commission on Human Rights to make recommendations to the Preparatory Committee for the Conference. The objectives of the World Conference, identified in the resolution, were the following: (*a*) to review the progress made in the field of human rights since 1948; (*b*) to examine the link between development and enjoyment of economic, social and cultural rights as well as civil and political rights; (*c*) to improve the implementation of existing instruments; (*d*) to evaluate existing United Nations human rights mechanisms and methods; (*e*) to formulate recommendations for the increased effectiveness of these mechanisms; and (*f*) to guarantee appropriate resources for the United Nations human rights programme. By resolution 1991/30 of 5 March 1991, the Commission on Human Rights formulated its recommendations for the Preparatory Committee.

As to the scope of the agenda of the Conference, Mr. Bota suggested that the Conference should concentrate on the implementation of existing standards and the prevention of human rights violations, generate new concepts and forward-looking strategies, and focus on the major human rights issues likely to preoccupy future generations. In his opinion, the Conference should not endeavour to reconceptualize human rights nor challenge the achievements of the United Nations in the field; equally, the Conference would be well advised to steer away from State-oriented issues. It was not the purpose of the Conference to scrutinize country situations nor to condemn individual States, but to determine how the implementation machinery in the field of human rights could be strengthened, streamlined and made more effective.

While the achievements of the Conference were difficult to predict, the Conference could and should give new impulse to existing programmes and explore ways of strengthening existing rights through implementation and technical co-operation. It was necessary to achieve more consistent results through the improvement of co-ordination among the treaty-monitoring bodies, the recognition of their decisions as being legally binding, the automatic follow-up of their decisions, the improved scrutiny of states of emergency, etc., and through the non-confrontational methods of advisory services and technical assistance. The Conference should also come forward with proposals for the restructuring of the United Nations human rights programme and see to it that the programme was endowed with appropriate resources.

Mr. Bota stressed that the World Conference was not an aim in itself; rather, it could be seen as a catalyst in a world-wide effort for the effective universal promotion and protection of human rights. In that perspective, it was the culminating point of a wide-ranging and dynamic preparatory process that had already begun.

Mrs. Diallo explained the scope and activities of the United Nations programme of advisory services and technical assistance in the field of human rights. Previous speakers had already noted that the programme had developed into a highly successful mechanism for the promotion of human rights, and that its projects could be tailored to the specific needs of countries requesting such assistance. Since 1988, a large number of African States had asked the Centre for Human Rights to provide advisory services and/or technical assistance.

Mrs. Diallo noted that the Centre's Steering Group on Advisory Services followed the rules of the United Nations Development Programme (UNDP) for project formulation. Notwithstanding, it was necessary to take into consideration the historical experience of requesting States in the formulation of advisory services projects. The provision of logistical support for the African Commission on Human and Peoples' Rights was an important aspect of the programme.

Mr. Abdul-Aziz outlined the programme of technical assistance in the field of crime prevention. A United Nations trust fund had been established for this purpose and the services of a United Nations interregional adviser on crime prevention had been made available. The regional crime prevention institutes had an important role to play in the provision of technical assistance, but it was necessary to mention that the technical assistance programme in the field of crime prevention was jeopardized by serious financial constraints. Mr. Abdul-Aziz suggested that, unless African Governments made crime prevention and the administration of justice a priority of their socio-economic policies, there was little scope for effective United Nations activity.

Mr. Swepston emphasized that a high percentage of ILO budget was earmarked for the provision of advisory services. Both regional and national seminars were regularly organized under the auspices of regional ILO offices. The establishment, in 1964, of a "direct contacts" system between ILO and Governments in need of technical assistance had proved highly successful; furthermore, it had been decided to increase the numbers and the role of regional advisers on international labour standards. Finally, Mr. Swepston noted that ILO provided technical assistance to national liberation movements as well as to nascent trade unions in newly independent countries.

Discussion

Mr. Khalil suggested the formulation and adoption of a Third Optional Protocol to the International Covenant on Civil and Political Rights, under which States parties would be called upon to establish national human rights commissions or committees, set up in accordance with domestic laws and regulations, and composed of independent experts and human rights advocates. The benefits to be derived from such national machinery were manifold; not least were improved information on international human rights standards at the local level and the preparation, in a sound legal way, of reports on the implementation of international instruments in the field of human rights.

Mr. Khalil further recommended the elaboration of an international convention on legal co-operation in the implementation of penal/criminal codes. The promulgation of such an instrument would assist national authorities in the field of administration of criminal justice.

Mr. Shiddo suggested that the participants should call on all African States that had not ratified the African Charter on Human and Peoples' Rights to do so. In this context, it was necessary to step up information efforts and to disseminate more widely than hitherto international and regional instruments in the field of human rights. Mr. Sock proposed that all countries that had not ratified the Charter of the African Institute for the Prevention of Crime and Treatment of Offenders (UNAFRI) should be encouraged to do so.

Mr. Badawi El-Sheikh recommended that the seminar should urge African Governments to facilitate the establishment of national human rights organizations and/or commissions. Mr. Lessir proposed that the teaching of human rights in schools and universities should be encouraged, and that public assistance should be made available for that purpose.

Mr. Sendague reiterated that economic, social and cultural rights were "flexible rights" inasmuch as their implementation was concerned. Mr. Badawi El-Sheikh replied that in this respect the United Nations Declaration on the Right to Development could be considered a good example of "soft law", allowing for gradual implementation.

Closing session

Mr. Bota expressed his gratitude to the organizers and co-sponsors of the seminar and in particular to the Egyptian Government, host of the seminar. He observed that a number of common concerns could be distilled from the presentations made in the course of the week and the interventions of participants. The first was that, while African countries did their best to promote international human rights standards and an administration of justice based upon such standards, there was a considerable way to go towards the goal of full respect for them. This related in particular to the protection of children's rights. Several interventions had emphasized the need for a judiciary independent of executive pressures and influences.

The second concern related to the implementation of judicial procedures. Some speakers had criticized the practice of administrative detention in African countries, the lack of access to domestic courts and to legal aid, or the length of judicial proceedings; others had noted that a human rights-conscious administration of justice was hampered either by financial constraints or by the fact that it was not made a political priority.

Another concern related to the need for information, education and training in the field of administration of justice. Most speakers had noted that African administrators of justice were not sufficiently aware of international human rights standards and had suggested that it would be desirable to make available United Nations assistance for the purpose of training magistrates, prison administrators, police, etc.

These concerns were valid and deserved full attention. Human rights were indivisible and universal and did not lend themselves to any attempt at classification by hierarchy. Mr. Bota expressed his appreciation that the notion of universality of human rights had been underlined by several speakers. Participants in the workshop agreed that respect for human dignity and human rights did not constitute an optional endorsement of principles from which it was possible to derogate in times of national emergency. On the contrary, as Mr. Martenson had emphasized in his opening address, respect for these principles constituted a *conditio sine qua non* for social and economic development; an equal and equitable administration of justice undoubtedly had to be included among the basic tenets of human rights.

In was in the light of these observations that the need for national and regional programmes of education, training and information in the field of human rights had to be assessed. Mr. Bota subscribed to the remark that hu-

man rights education had to begin at home; some promising steps at the national level had been taken in this direction in Africa. Valuable suggestions relating to both the inclusion of human rights education in school and university curricula and the dissemination of international instruments in as many languages as possible had been made; these proposals merited timely follow-up action. Indeed, people had to be aware of their rights in order to avail themselves of them. The Centre for Human Rights was prepared to assist such national education or training programmes as had been established or were in the planning stage. More specifically, the Centre encouraged the reinforcement of co-operation between OAU and national human rights institutions, between OAU and the Centre itself as well as between OAU and other organizations, such as ILO and UNHCR.

The interventions of the previous days had confirmed the adage that human rights were not cheap. Serious financial bottlenecks in many African countries, which were a threat to the implementation of national programmes for a better administration of justice, were a matter of serious concern to the United Nations. The Preparatory Committee for the 1993 World Conference on Human Rights should be encouraged to address this issue.

Mr. Umozurike emphasized that the participants in the seminar had reaped a rich intellectual harvest of human rights, humanitarian and refugee law. Participants were duty-bound to convey their experiences to their home Governments, and to protect and promote human rights in their individual capacities. Human rights were indivisible and universal and knew no bounds, no colour, no class.

The African Commission for Human and Peoples' Rights expressed its appreciation and welcomed the support of the participants and of the Centre for Human Rights: all were partners in progress. The Commission was slowly finding its way and pledged to carry out its difficult task with all the vigour at its command. It was necessary to give the seminar and similar occasions greater publicity; the press, in particular, had to be brought into deliberations on human rights issues.

Mr. Haggag commended the Centre for Human Rights for the assistance extended to the African Commission. He pledged the continued support of OAU for the protection of human rights in Africa; at the same time, however, it had to be recognized that African countries were facing serious problems. OAU would seek to encourage all African Governments to ratify all existing instruments in the field of human rights. Mr. Haggag expressed the hope that similar meetings would be organized within the African continent.

Mr. El-Ibrachi reiterated the importance of economic rights and the right to development for African countries. The African concept of development was different from that of Western industrialized States. It was necessary for Africa to find a common position on the issue of human rights; in

that sense, it might be preferable to let a South-South dialogue precede a fruitful North-South dialogue.

In respect of African mechanisms for the implementation of international and regional human rights standards, Mr. El-Ibrachi expressed his conviction that the time was ripe for the establishment of an African Court for Human Rights. Egypt would welcome proposals to this effect and was prepared to host a conference on the issue. It was also time to look into the possibility of endowing African human rights bodies with effective individual complaints mechanisms, or to establish a ''quasi-judicial'' body with the power to hand dowr binding decisions.

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Printed at United Nations, Geneva
GE.91-18971
September 1992–10,095

United Nations publication
HR/PUB/91/6